IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 181 of 2005
with
CIVIL APPLICATION NO.8217 OF 2005

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ISHWARGIRI RATNAGIRI GOSAI - Appellant(s)
Versus
ADARIYANA GRAM PANCHAYAT - Defendant(s)

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Appearance :
MR RA MISHRA for Appellant(s) : 1,
MR AM DAGLI for respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 22/09/2006

ORAL JUDGMENT

1. Heard learned counsel for the parties. The appeal is admitted for hearing the parties on the following substantial question of law.

> “Whether on the facts and in the circumstances of the case, the first

appellate Court was justified in dismissing the suit in toto even when it observed that the Panchayat would be entitled to take an action either under Section 94 of the Gujarat Panchayat Act,1963 or under Section 5 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 ?

2. The short facts necessary for disposal of the present appeal are that the appellant claiming to be in possession of a particular land under lease from the Panchayat was served with a notice issued under Section 94 of the Panchayat Act, 1963 requiring the plaintiff to remove the encroachment within a period of 30 days. The plaintiff being aggrieved by the said notice filed Civil Suit before the learned trial Court submitting inter-alia that the respondents were not entitled to take an action under Section 94 of the Panchayat Act and as they had no authority, they be restrained permanently from taking an action under Section 94 of the Gujarat Panchayat Act,1963.

3. The defendants appeared before the trial court and submitted inter-alia that the lease was

granted in favour of the plaintiff's predecessor in title, the lease was terminated and since after termination of the lease, the defendant has become a trespasser and as the land in dispute is surrounded by roads and streets on all the sides, it is a part of road. Therefore, under the circumstances, notice under section 94 of the Gujarat Panchayat Act could be maintained.

4. The learned trial Court agreed with the submissions made by the plaintiff and decreed the suit which pursuated the defendant-Panchayat to file an appeal before the appellate Court.

5. The appellant-Panchayat contended before the first appellate Court that they were entitled to take an action either under Section 5 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 or even under Section 94 of the Panchayat Act,1963, because in each of the case the defendant-Panchayat would be evicting a person who was in unauthorised occupation of the property. The plaintiff however, submitted before the appellate Court

that the Panchayat was not entitled to take an action under Section 94 of the Panchayat Act, but could proceed under Section 5 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972.

6. The first appellate Court agreed with the submissions made by the defendant. It held that actions under both the Acts would be available to the Panchayat and the trial court could not issue a blanket injunction. It accordingly allowed the appeal and dismissed the suit.

7. Shri Mishra, learned counsel for the appellant, submits that if first appellate Court was of the opinion that remedies under Section 94 of the Panchayat act or under Section 5 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 are available to the Panchayat, then such a direction ought to have been issued to the Panchayat and an injunction should have been granted in favour of the plaintiff that except in accordance with law and in due execution of the process known to the law, the plaintiff cannot be evicted. His

submission is that the suit could not be dismissed in toto.

8. Shri Dagli, learned counsel for the respondent, submits that the present suit was misconceived because the question relating to jurisdiction of the Panchayat to take an action under Section 94 of the Panchayat Act could not be raised before the Civil Court unless the objections were raised before the Panchayat itself. He submits that if the Panchayat takes the view that Section 94 proceedings are maintainable and the plaintiff is liable to be evicted, only then such finding can be challenged either in appeal, if provided under the Act or before a Civil Court on the ground that the order passed by the Panchayat is against the provisions of law.

9. I have heard the parties at length.

10. The learned first appellate Court while discussing the issues has placed its strong reliance upon a judgment of this Court which was between Gujarat Housing Board and K.B.Parmar and others, reported in 1992 (1) G.L.R. 79. The appellate Court observed that the Gujarat

Housing Board was entitled to proceed under the Housing Board Act or under the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972. The appellate Court relying upon the observations made in the said case observed that the proceeding under Section 94 of the Panchayat Act would be maintainable and in the alternative the Panchayat was entitled to take an action under Section 5 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972. In the opinion of this Court, the observations made by the first appellate Court were not justified. The appellate Court while dismissing the suit should have only observed that the plaintiff would be entitled to appear before the Panchayat and raise all his possible objections available to him under the law and if the Panchayat decides against the interest of the plaintiff, then only the plaintiff would have cause of action to file an appeal or to come to the Civil Court. Whether the judgment in the matter of Gujarat Housing Board is applicable or not and whether in view of the

findings recorded in the said judgment, the defendant would be entitled to take an action under the Panchayat Act, 1963 was not required to be decided at this stage. All the findings recorded by the first appellate Court are set aside. The judgment and decree delivered by the learned first appellate Court are set aside and simultaneously the judgment and decree passed by the learned trial Court granting blanket injunction are also set aside. Instead, it is hereby directed that the defendant would be entitled to evict the plaintiff in accordance with the provisions of law as applicable between the parties. If the defendant feel that they would be entitled to take action under Section 94 of the Panchayat Act, 1963, then they would give proper opportunity of hearing to the plaintiff, decide all the objections raised by the plaintiff by a speaking order in the matter. In case, the objections filed by the plaintiff are overruled, then at least for a period of 30 days the construction raised by the plaintiff shall not be demolished by the Panchayat giving

reasonable opportunity to the plaintiff to approach either the appellate Court to any other forum which is available to him under the law. The Panahayat, however, would be entitled to take an action under Section 5 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 and in such a case, the plaintiff would not be allowed to raise objections that the Panchayat is not entitled to invoke the jurisdiction under the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 because according to the plaintiff's own submission an action under Section 5 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 would be maintainable against him. The directions contained aforesaid shall be treated to be in form of an injunction. The appeal is finally disposed of. No costs. Let a decree be framed accordingly.

11. Civil Application No.8217 of 2005 stands disposed of.

(R.S.GARG, J.)

*mithabhai